IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 18186 of 2003**

Between:

Jagjeevan Rao, S/o. A.B. Bengalkar,
R/o. 1-9-560, Adikmet,
Hyderabad.

**..... PETITIONER**

AND

1 Government of Andhra Pradesh, Rep. by its Secretary,
Education Department, Secretariat,
Hyderabad.
2 Osmania University, Rep. by its Registrar,
Osmania Univesity, Taranaka,
Hyderabad.

**...RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate order or direction declaring the inaction of the respondents not including the name of the petitioner in the seniority list dt. 26-6-2003 for the promotion to the post of Superintendent under 50% seniority quota as illegal, arbitrary and unconstitutional violative of Art. 14, 15 and 21 of the Constitution of India and consequently direct the 2nd Respondent to include the name of the Petitioner in the Seniority list dt. 26-6-2003 for the promotion to the post of Superintendent under 50% seniority quota considering his seniority.

**Counsel for the Petitioner:MR.N.PRAVEEN KUMAR**

**Counsel for the Respondent No.1.: GP FOR HIGHER EDUCATION**

**Counsel for the Respondent NO.2: MR. DEEPAK BHATTACHARJEE**

**The Court made the following :**

**ORDER:**

1. The petitioner filed this writ petition with a prayer to issue a writ of mandamus declaring the inaction of the respondents in not including the name of the petitioner in the seniority list dated 26-6-2003 for the promotion to the post of Superintendent under 50% seniority quota as illegal and arbitrary.

2. It is the case of the petitioner that initially he was appointed on consolidated emoluments on 27-11-1979 in the correspondence-cum contact programme for B.Ed., and M.Ed., college of Education, Osmania University based on the recommendations of the selection committee. In the year 1981 he was given regular scales of pay. On 9-6-1995 the petitioner was appointed to the Special Grade Scale of Senior Assistant on completion of 10 years service with effect from 1-4-1991. Later, he was given Special promotion on completion of 16 years of service and he has been serving the University since last 20 years. O n 26-6-2003 the 2nd respondent university issued seniority list for the promotion to the post of Superintendent under 50% quota in which the name of the petitioner was not shown, though the names of similarly appointed candidates were there.

3. Learned counsel appearing for the petitioner contends that though the petitioner was appointed purely on temporary basis in the year 1979, subsequently by virtue of the orders passed by the Registrar of the University, the respondents have given pay scales and also special grade of pay scales. The petitioner would be placed under the seniority list of the Senior Assistant, when the similarly situated persons name were included in the list. Hence, there is discrimination in the preparation of the seniority list, warranting interference of this Court.

4. The learned Standing Counsel appearing on behalf of the respondent contends that the petitioner was selected on purely temporary basis and simply because pay scales have been given to him, that does not confer any right that his services were regularized in the cadre of regular pay scales in the cadre of Senior Assistant. The question of incorporating his name in the seniority list does not arise and prayed to dismiss the writ petition.

5. Admittedly, the petitioner was appointed as Upper Division Clerk by the proceedings of the Director correspondence-cum-contact programme dated 27-11-

1979. In the year 1981 he was given regular pay scale. In the year 1995 he was given Special Grade scale of Senior Assistant. In the year 1999 special promotion post scale of Senior Assistant on completion of 16 years service was given to him. When the University prepared the list of Senior Assistant for the purpose of promotion to the post of Superintendent dated 26-6-2003, the name of the petitioner was not included. Therefore, the present writ petition is filed by the petitioner.

6. The petitioner has not filed any document to show that his services were regularized and his probation has been confirmed in accordance with the Rules. As per the conduct Rules the Seniority has to be counted from the date of regularization, so also probation has also to be declared by the Competent Authority. Unless probation of a particular employee is declared as a fit, he cannot be deemed to be a member of that particular service. So also, no document is filed that the services of the petitioner is regularized. Unless the services of the petitioner were regularized, putting the name of the petitioner in the seniority list does not arise.

7. The learned counsel for the petitioner placed reliance on the decision of this Court i n *The Registrar Osmania University Vs. B.K.Rama Devi,* it was observed by Division Bench of this Court:

> *"Section 49 of the Act is not a bar for this Court to enforce a constitutional right of the petitioner flowing from Article 14 read with Article 16 of the Constitution. The statutory obligation imposed on the University under Section 49 of the Act may come into play when the University proceeds to regularize the services of the petitioner. It is not the case of the University that at any point of time, it had proposed to regularize the services of the petitioner and such proposal was turned down by the State Government. Therefore, this kind of hyper-technical objection raised by the University after realizing that it has no case on merit should be disapproved and cannot be countenanced".*

8. The learned counsel also relied upon a decision of Division Bench of this Court in *Prabakar Joshi Vs. Kendriya Vidyalaya Sangatan,* it was observed ;

> *"The petitioner has been working in a clear vacancy. The petitioner is possessing the requisite qualifications for the appointment to the post of Music Teacher. The petitioner*

*gained 10 years of teaching experience in Kendriya Vidyalaya".*

9. The Division Bench of this Court directed the authority to regularize the services of the petitioner therein as a music teacher, since he was possessing the requisite qualifications and that there was clear vacancy. These two decisions have no application to the facts of the case. In the instant case, the probation of the petitioner has not been declared in the Senior Assistant cadre nor his services were regularized to put the name of the writ petitioner in the seniority list dated 26-6-2003. As per the rules of the University, unless the services of the candidate are regularized, he cannot be put in seniority list. Therefore, the writ of mandamus cannot be given to the respondents directing them to act contrary to the provisions of the University Services Act.

10. Therefore, the writ petition is devoid of merits and accordingly the same is dismissed. No order as to costs. However, the remedies available to the petitioner are left open.

SD/-T. LAKSHMI HEMALATHA

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary,Government of Andhra Pradesh,
Education Department, Secretariat,
Hyderabad.
2 The Registrar,Osmania University, Osmania Univesity Taranaka, Hyderabad.

3. 2 CCs to G.P. for Higher Education, High Court Buildings, Hyderabad.

(OUT)

4. 2 CD copies

5. 1 CC to MR.PRAVEEN KUMAR,ADVOCATE (OPUC)

**6.One CC to Mr.Deepak Bhattachargee, Advocate (OPUC)**

**KUL**

**High Court**

**DATED: 29.06.2005**

**ORDER**

**W.P.No.18186 of 2003**

**DISMISSING THE W.P.**

**WITHOUT COSTS**